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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 RIKY PERASSO,

11 Plaintiff,

12 v.

13 WASHINGTON STATE  
14 DEPARTMENT OF CORRECTIONS,  
et al.,

15 Defendants.

CASE NO. 3:18-CV-5934-BHS-DWC

ORDER

16 Plaintiff Riky Perasso, who is represented by counsel, filed this civil rights Complaint  
17 pursuant to 42 U.S.C. § 1983. *See* Dkt. 1. Currently before the Court is Plaintiff's Motion to  
18 Order Physical Production of S[u]rveillance Videos. Dkt. 35. After consideration of the record,  
19 the Motion (Dkt. 35) is denied.

20 **I. Background**

21 Plaintiff, an inmate within the Washington State Department of Corrections ("DOC"),  
22 alleges Defendants violated Plaintiff's constitutional rights and state law by failing to protect him  
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1 when he was assaulted by three inmates at Stafford Creek Correctional Center (“SCCC”) on  
2 October 19, 2016. Dkt. 1-2.

3 On May 20, 2019, the Court, in relevant part, directed Defendants to provide Plaintiff’s  
4 counsel and staff with a reasonable opportunity to view video surveillance evidence from SCCC  
5 on the date Plaintiff was allegedly attacked (“video evidence”). Dkt. 33. Plaintiff now moves for  
6 a Court order directing Defendants to provide Plaintiff with a physical copy of the video  
7 evidence. Dkt. 35. Defendants request the Motion be denied because Plaintiff is improperly  
8 moving for reconsideration of the May 20, 2019 Order (“Order”) and has failed to meet and  
9 confer prior to filing a discovery related motion. Dkt. 36. Defendants also state the scope of the  
10 Order is sufficient to allow Plaintiff’s counsel to obtain the necessary evidence from the videos.  
11 *Id.*

## 12 **II. Discussion**

### 13 *A. Motion for Reconsideration*

14 Plaintiff appears to seek reconsideration of the Order directing Defendants to provide  
15 Plaintiff’s counsel and staff with a reasonable opportunity to view the video evidence. *See* Dkt.  
16 35. Plaintiff is essentially asserting the Order, allowing Plaintiff only the opportunity to view the  
17 video evidence, is overly burdensome because Plaintiff’s counsel is required to travel to  
18 Tumwater to view the video evidence and the video evidence is not in a user-friendly format. *See*  
19 *id.*

20 Pursuant to Local Civil Rule 7(h), motions for reconsideration are disfavored and will be  
21 denied absent a showing of manifest error or a showing of new facts or legal authority which  
22 could not have been presented earlier with reasonable diligence. A motion for reconsideration  
23 must “be filed within fourteen days after the order to which it relates is filed.” LCR 7(h)(2).  
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1 Here, Plaintiff has not sought timely reconsideration of the Order. The Order was entered  
2 on May 20, 2019. Dkt. 33. Plaintiff did not file the Motion until September 30, 2019, which was  
3 four months after the Order was entered and almost two months after Plaintiff's counsel viewed  
4 the video evidence. *See* Dkt. 35 (viewed video evidence in Tumwater on August 7, 2019). Thus,  
5 the Motion is not timely.

6 Furthermore, Plaintiff fails to show a manifest error in the Court's prior ruling or new  
7 facts or legal authority which could not have been presented earlier. *See* Dkt. 35, 39. Rather,  
8 Plaintiff's counsel requests the Court broaden the scope of the Order because it is inconvenient,  
9 time consuming, and a burden for Plaintiff's counsel to view the video evidence in Tumwater.  
10 *See* Dkt. 35, 39. While Plaintiff states this Motion follows his "diligent efforts to review the  
11 videos" (Dkt. 39), the Court does not find this is sufficient to show new facts necessitating  
12 reconsideration of the Order. Accordingly, the Court finds Plaintiff has not met the standard  
13 outlined in Local Civil Rule 7(h).

14 B. *Motion to Compel*

15 Pursuant to Federal Rule of Civil Procedure 37(a)(1):

16 . . . On notice to other parties and all affected persons, a party may move for an  
17 order compelling disclosure or discovery. The motion must include a certification  
18 that the movant has in good faith conferred or attempted to confer with the person  
or party failing to make disclosure or discovery in an effort to obtain it without  
court action.

19 *See also* LCR 37(a)(1).

20 Here, Plaintiff is moving for a Court order compelling Defendants to provide his counsel  
21 with a copy of the video evidence. Dkt. 35. Plaintiff, however, failed to certify he conferred or  
22 attempted to confer with Defendants' counsel regarding the requested discovery. *See id.*; *see also*  
23 Dkt. 37, Throgmorton Dec., ¶ 8. Plaintiff did not respond to Defendants' counsel's assertion that  
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1 Plaintiff's counsel has not attempted confer with Defendants' counsel regarding physical  
2 production of the video evidence. *See* Dkt. 39. Thus, the Court finds Plaintiff has failed to certify  
3 he conferred or attempted to confer with Defendants' counsel regarding the requested discovery  
4 prior to filing the Motion. Accordingly, the Court finds Plaintiff has not complied with Rule 37.<sup>1</sup>

5 **III. Conclusion**

6 Plaintiff has not shown this Court should reconsider the Order and direct Defendants to  
7 provide Plaintiff's counsel with a physical copy of the video evidence. Further, Plaintiff has not  
8 shown his counsel met and conferred with Defendants' counsel to resolve this discovery matter.  
9 Therefore, the Motion (Dkt. 35) is denied.

10 Dated this 4th day of November, 2019.

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13 David W. Christel  
14 United States Magistrate Judge  
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23 <sup>1</sup> The Court notes that had the parties met and conferred it is possible they may have reached a resolution.  
24 For example, Defendants' counsel may be able to make the video evidence available to Plaintiff's counsel at an  
office in Seattle, closer to Plaintiff's counsel's office. *See* Dkt. 37.